

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. : 10/551,443 Confirmation No. : 2972
First Named Inventor : Roland H. C. EBERL
Int. Filing Date : October 8, 2001 (PCT/EP01/11634)
Attorney Advisor : Cynthia M. KRATZ
Docket No. : 101795.56306US
Customer No. : 23911

Title : Device and Method for Determining the Orientation of an
Eye

PETITION UNDER 37 C.F.R. § 1.47(a)

Mail Stop PCT
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Attention: Office of PCT Legal Administration

Sir:

This petition is filed in response to the decision on response to notification of missing requirements dated February 5, 2009.

Acceptance of this application pursuant to 37 C.F.R. § 1.47(a) is respectfully requested. The \$200.00 fee required pursuant to 37 C.F.R. § 1.17(g) is being paid by credit card. Please charge any deficiency in fees or credit any overpayments to Deposit Account No. 05-1323 (Docket No. 101795.56306US).

Appended to this petition as Exhibit I is a copy of a German language letter dated March 31, 2009, signed by Matthias Mayer, the estate curator of Roland H. C. Eberl, who is the deceased inventor named in the present U.S. Patent application, and an English language translation of that German language letter.

Appended to this petition as Exhibit II are copies of a Declaration and Power of Attorney executed by Heinrich A. Eberl and David Dickerson and an Accompanying Sheet to that Declaration and Power of Attorney.

Appended to this petition as Exhibit III are copies of a Declaration and Power of Attorney executed by David Dickerson on behalf of the deceased inventor, and a second Accompanying Sheet to that Declaration and Power of Attorney.

From the third paragraph in the German language letter and the corresponding paragraph of the English language translation in Exhibit I, and from the sixth and seventh paragraphs in the Accompanying Sheets included in Exhibits II and III, it is evident that Matthias Mayer, as the known legal representative of the deceased inventor, refused, and refuses, to make application.

The last known address of Matthias Mayer, as the legal representative of the deceased inventor, is set forth in the fifth paragraphs in the Accompanying Sheets included in Exhibits II and III.

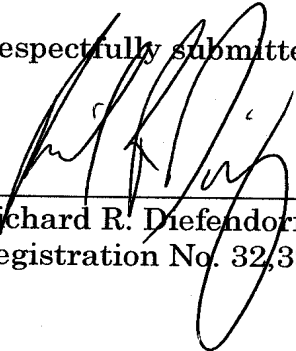
Treatment of the Declaration and Power of Attorney copies included in Exhibits II and III as being signed on behalf of Matthias Mayer as the known legal representative of Roland H. C. Eberl should be in order pursuant, for example, to guidelines provided in MPEP 409.03(a)(A).

If there are any questions regarding this petition or the application in general, a telephone call to the undersigned would be appreciated since this should expedite the prosecution of the application for all concerned.

If necessary to effect a timely response, this paper should be considered as a petition for an extension of time sufficient to effect a timely response. Again, please charge any deficiency in fees or credit any overpayments to Deposit Account No. 05-1323 (Docket No. 101795.56306US).

Respectfully submitted,

April 6, 2009



Richard R. Diefendorf
Registration No. 32,390

CROWELL & MORING LLP
Intellectual Property Group
P.O. Box 14300
Washington, DC 20044-4300
Telephone No.: (202) 624-2500
Facsimile No.: (202) 628-8844
RRD:rd

Exhibit I

Rechtsanwalt
Matthias Mayer

80333 München
Löwengrube 12
Telefon 089 599 89 44 0
Telefax 089 599 89 44 1

RA Matthias Mayer, Löwengrube 12, 80333 München

31.03.2009

Herrn
David Dickerson
Gartenstr. 51

85354 Freising
per Fax: 08161 144946

Ihr Zeichen: PCT internationale Anmeldung Nr. PCT/EP01/11634 (08.10.2001)
Bei mir vormals: Nachlasspflegschaft EBERL Roland Herbert Claudius, gestorben am
15.11.2007

Sehr geehrter Herr Dickerson,
in vorbezeichneter Angelegenheit war ich in der Zeit vom 18.03.2008 – 04.11.2008 zum
Nachlasspfleger bestellt.

Mit Schreiben vom 31.03.2008 hat mir das dt. Patent- u. Markenamt mitgeteilt, dass der
Erblasser weder Marken noch Patente angemeldet hat.

Aus der von Ihnen übersandten Übertragungserklärung ersichtlich hatte der Erblasser noch zu
Lebzeiten alle Rechte aus gegenständlicher Patentanmeldung übertragen und hierfür eine
Gegenleistung erhalten. Aus diesem Grund sah ich mich daher auch nicht in der Lage in
diesem Zusammenhang eine Erklärung in Bezug auf die Declaration abzugeben, unabhängig
von der Vorlage der Anmeldung –inzwischen wurde die Pflegschaft wieder aufgehoben.

Mit freundlichen Grüßen


Rechtsanwalt

Matthias Mayer
Attorney at Law

80333 Munich
Löwengrube 12
Tel: 089 599 89 44 0
Fax: 089 599 89 44 1

Matthias Mayer, attorney, Löwengrube 12, 80333 Munich

March 31st, 2009

Mr.
David Dickerson
Gartenstr. 51
85354 Freising

Via fax: 08161 144946

Your Ref: PCT application PCT/EP01/11643 (Oct. 8, 2001)
my previous [reference]: estate curatorship EBERL Roland Hubert Claudius, deceased on
November 15th, 2007

Dear Mr. Dickerson,

With regard to the above-referenced matter, I was appointed as estate curator in the period from March 18th, 2008 to November 4th, 2008.

In its letter of March 31st, 2008, the German Patent and Trademark Office informed me that the deceased had filed neither marks nor patents.

From the assignment documents you sent, it is apparent that the deceased had assigned all rights [stemming] from the subject patent while still alive and had received compensation. For this reason, I thus [(sic!)] also [(sic!)] did not see myself in a position to provide, in this respect [(sic!)], a declaration with respect to the Declaration, regardless of presentation of the application – in the meantime, the curatorship has been closed again.

Sincerely,

attorney at law

Exhibit II

DECLARATION AND POWER OF ATTORNEY

(For Use with Application Data Sheet)

Title Of Invention	Device and Method for Determining the Orientation of an Eye
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As the below named inventor(s), I/we declare that:

This declaration is directed to:

- ☐ The attached application, or
☒ PCT International Application No. PCT/EP01/11634, filed 08 October 2001 (08.10.2001).
☐ Application No. _____, filed _____ as amended on _____ (if applicable);

I believe that I am the original, first and sole inventor (if only one name is listed below) or an original, first and joint inventor (if plural names are listed below) of the subject matter which is claimed and for which a patent is sought;

I/we have reviewed and understand the contents of the above-identified application, including the claims, as amended by any amendment specifically referred to above;

I/we acknowledge the duty to disclose to the United States Patent and Trademark Office all information known to me/us to be material to patentability as defined in 37 CFR 1.56, including material information which became available between the filing date of the prior application and the National or PCT International filing date of the continuation-in-part application, if applicable;

I/we hereby appoint the practitioners at **CROWELL & MORING LLP**, whose Customer Number is:

23911

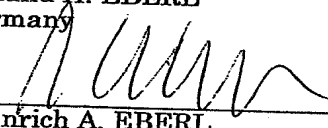
as my/our attorneys to prosecute the application identified above, and to transact all business in the United States Patent and Trademark Office connected therewith; and

All statements made herein of my/our own knowledge are true; all statements made herein on information and belief are believed to be true, and further these statements were made with the knowledge that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and may jeopardize the validity of the application or any patent issuing thereon.

FULL NAME(S) of INVENTOR(S)

Signature: _____
 Inventor one: Roland H. EBERL
 Citizen of: Germany

Date: _____

Signature: 
 Inventor two: Heinrich A. EBERL
 Citizen of: Germany

Date: Oct. 6. 2008

Signature: 
 Inventor three: David DICKERSON
 Citizen of: United States

Date: Sep. 17, 2008

___ Additional Inventors on Attached sheet if checked

See accompanying sheet

 (Inventor three)

Date: April 2, 2009

Accompanying Sheet

to the Declaration directed to
PCT International Application
PCT/EP01/11634
executed by
Heinrich EBERL on October 6th, 2008
and
David DICKERSON on April 2nd, 2009

To my great sadness, joint inventor Roland H.C. EBERL passed away on November 15th, 2007. By virtue of Mr. Roland Eberl's assignment of this application to me on June 13th, 2005, I believe to have sufficient interest in this application to co-execute the subject declaration in lieu of Mr. Roland Eberl notwithstanding execution by his legal representative who, however, refuses to sign.

Mr. Roland Eberl was a citizen of Germany. To the best of my knowledge, he was last resident in Germany at Brodwastlweg 6, 82061 München-Neuried.

Joint inventor Mr. Heinrich Eberl is likewise a citizen of Germany and is, to the best of my knowledge, resident in Germany at Hochvogelweg 3, 87463 Probstried.

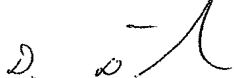
I, David Dickerson, am a US citizen and am currently resident in Germany at Gartenstrasse 51, 85354 Freising.

In the period from March 18th, 2008 to November 4th, 2008, the curatorship of Mr. Roland Eberl's estate was entrusted to Mr. Matthis Mayer, attorney at law. To the best of my knowledge, Mr. Mayer is a citizen of Germany, resident in Munich, Germany. He has his place of business at Löwengrube 12, 80333 Munich, Germany.

I first contacted Mr. Mayer in October 2008 re the necessary declaration for the present application. At that time, I had just learned of Mr. Roland Eberl's tragic death. In a telephone conversation with Mr. Mayer in October 2008, it became apparent that Mr. Mayer had been unaware of Mr. Roland Eberl's inventorship. In this respect, Mr. Mayer's letter of November 3rd, 2008 states that he "is unaware of any activities relating to the present patent." Although I had offered my support (as well as the support of my legal representative before the USPTO) should any questions arise and had assured him in writing in late October 2008 that no costs would be incurred to him or to Roland Eberl's heirs in conjunction with my request that he sign the Declaration, Mr. Mayer never asked for a copy of the application.

Following the USPTO's Decision of February 5th, 2009, I wrote to Mr. Mayer on March 13th and 30th, 2009 explaining the reasons behind the USPTO's finding of February 5th, 2009 that insufficient evidence had been brought forth to conclude that Mr. Mayer refuses to sign the declaration as the legal representative of the deceased inventor. Both letters offered to provide him with a copy of the application at no charge. In response to these letters, Mr. Mayer sent me the accompanying letter dated March 31st, 2009.

All statements made herein of my own knowledge are true; all statements made herein on information and belief are believed to be true, and further these statements were made with the knowledge that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and may jeopardize the validity of the application or any patent issuing thereon.



David Dickerson, April 2nd, 2009

Exhibit III

DECLARATION AND POWER OF ATTORNEY

(For Use with Application Data Sheet)

Title Of Invention	Device and Method for Determining the Orientation of an Eye
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As the below named inventor(s), I/we declare that:

This declaration is directed to:

- ☐ The attached application, or
☒ PCT International Application No. PCT/EP01/11634, filed 08 October 2001 (08.10.2001).
☐ Application No. _____, filed _____ as amended on _____ (if applicable);

I believe that I am the original, first and sole inventor (if only one name is listed below) or an original, first and joint inventor (if plural names are listed below) of the subject matter which is claimed and for which a patent is sought;

I/we have reviewed and understand the contents of the above-identified application, including the claims, as amended by any amendment specifically referred to above;

I/we acknowledge the duty to disclose to the United States Patent and Trademark Office all information known to me/us to be material to patentability as defined in 37 CFR 1.56, including material information which became available between the filing date of the prior application and the National or PCT International filing date of the continuation-in-part application, if applicable;


I/we hereby appoint the practitioners at **CROWELL & MORING LLP**, whose Customer Number is:

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as my/our attorneys to prosecute the application identified above, and to transact all business in the United States Patent and Trademark Office connected therewith; and

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FULL NAME(S) of INVENTOR(S)

Signature: 
 Inventor one: Roland H. EBERL
 Citizen of: Germany

Date: April 2nd, 2009

Signature: _____
 Inventor two: Heinrich A. EBERL
 Citizen of: Germany

Date: _____

Signature: _____
 Inventor three: David DICKERSON
 Citizen of: United States

Date: _____

___ Additional Inventors on Attached sheet if checked

** signed by David Dickerson for the reasons set forth on the accompanying sheet.*

Accompanying Sheet

to the Declaration directed to
PCT International Application
PCT/EP01/11634
executed by
David DICKERSON on April 2nd, 2009
in lieu of Roland H. EBERL and
in lieu of Mr. Roland Eberl's legal representative

To my great sadness, joint inventor Roland H.C. EBERL passed away on November 15th, 2007. By virtue of Mr. Roland Eberl's assignment of this application to me on June 13th, 2005, I believe to have sufficient interest in this application to execute the subject declaration in lieu of Mr. Roland Eberl notwithstanding execution by his legal representative who, however, refuses to sign.

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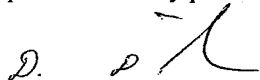
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I first contacted Mr. Mayer in October 2008 re the necessary declaration for the present application. At that time, I had just learned of Mr. Roland Eberl's tragic death. In a telephone conversation with Mr. Mayer in October 2008, it became apparent that Mr. Mayer had been unaware of Mr. Roland Eberl's inventorship. In this respect, Mr. Mayer's letter of November 3rd, 2008 states that he "is unaware of any activities relating to the present patent." Although I had offered my support (as well as the support of my legal representative before the USPTO) should any questions arise and had assured him in writing in late October 2008 that no costs would be incurred to him or to Roland Eberl's heirs in conjunction with my request that he sign the Declaration, Mr. Mayer never asked for a copy of the application.

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David Dickerson, April 2nd, 2009